

GAHC010248882024



2024:GAU-AS:11972

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Bail Appln./3608/2024

JEHIRUL ISLAM @ RAJA
S/O MD AKIBAR ALI
R/O BORCHUKABAHA
P.S. MIKIRBHETA,
DIST. MORIGAON

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE LD.PP, ASSAM

Advocate for the Petitioner : MR. R ALI, MR. T CHUTIA, R L CHUTIA

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

29.11.2024

Heard Mr. T. Chutia, learned counsel of the petitioner. Also heard Mr. M. P. Goswami, learned Additional Public Prosecutor for the State respondent.

2. This application is filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, praying for the release of the petitioner, who has been languishing in jail *hazot* since 27.10.2024 in connection with Mikirbheta P.S. Case No. 138/2024, registered under Section 303(2) of the BNS, *read with* Section 11 of the PCA Act.

3. The Case Diary called for in connection with the similar matter, i.e., AB Case No. 3011/2024, is available, and I have perused the same.

4. The learned counsel for the petitioner, Mr. Chutia, has submitted that as per the FIR, the incident took place on 16.10.2024 at about 8:00 P.M. upon receiving secret information that vehicle bearing Registration Nos. AS-02CC-4244, AS-01HC-8905, and AS-01RC-4236 were carrying suspected stolen cattle from the Nagaon side towards Morigaon. Accordingly, a Naka Checking was conducted. During the vehicle check at Jaluguti, the aforesaid vehicles were signaled to stop as suspected stolen cattle were seen, but all of them attempted to flee. The vehicle bearing Registration No. AS-02CC-4244 was successfully intercepted, while the other two vehicles managed to fled away from the place of occurrence.

5. However, from the forwarding report, it is seen that another incident occurred on 27.10.2024 at about 4:00 P.M., when, upon seeing the police team,

two cattle-loaded vehicles bearing Registration Nos. AS-01HC-8905 and AS-01PC-1183 fled at high speed. After a chase, the present petitioner was arrested along with one Merajul Islam, but the vehicle could not be intercepted, as it was concealed somewhere, taking advantage of the zig-zag multiple roads. But, no FIR was lodged for the said incident and he was forwarded in connection with FIR lodged on 16.10.2024.

6. Thus, he submits that the petitioner was arrested on 27.10.2024 and has been falsely implicated in this case. The petitioner was duly produced before the Elaka Magistrate, Morigaon, on 27.10.2024, and the Trial Court sent him to police remand for 7 days on the same date. He further submits that the FIR was lodged on 16.10.2024, and the prime accused, namely Ijajuddin Ali, was duly arrested in connection with the present case. Additionally, he submits that the petitioner is innocent and he is not at all involved in the alleged offence as mentioned in the FIR. To date, no complaint or FIR has been lodged by anyone claiming the theft of cattle. The learned counsel submits that there is no ingredient to attract Section 13(1) of the Assam Cattle Preservation Act, 2021, *read with* Section 11 of the PCA Act, against the present petitioner. Furthermore, the petitioner is behind bar for the last 33 days, and the IO got ample opportunity to interrogate him; and hence further custodial interrogation may not be necessary at this stage. And hence, considering the length of detention the learned counsel for the petitioner prays to grant regular bail to the petitioner and further he is ready to co-operate with the IO, if he is granted bail.

7. In this context, Mr. Goswami, learned Additional Public Prosecutor, submits that there is sufficient incriminating material available against the accused/petitioner. During the investigation, it was revealed that the accused/petitioner is the prime accused and has a criminal antecedent of similar

offences. Furthermore, he submits that this is an organized crime committed by a group that conceals vehicles along with stolen cattle if any members are apprehended by the police. He further stated that during interrogation, it was revealed that the petitioners in the AB Case No. 3011/2024, were also involved in the alleged offence, and both the vehicles and stolen cattle are still in their custody. He submits that further custodial interrogation is necessary to unearth the facts of the case and to apprehend the other co-accused persons involved in the organized crime. He also contends that releasing the petitioner at this stage would hamper and tamper with the investigation. Thus, he submits that joint custodial interrogation of the petitioner along with the other co-accused is required in the interest of the investigation. Accordingly, he raised objection, submitting that this is not a fit case to grant bail to the accused/petitioner merely on the ground of the length of detention.

8. In addition to his submissions, he relies on the decision passed by the Hon'ble Supreme Court in the case of **Indresh Kumar vs. The State of Uttar Pradesh & Anr.**, reported in 2022 Livelaw (SC) 610, wherein, it has been held that "the statements under Section 161 of Cr.P.C. may not be admissible in evidence, but are relevant in considering the *prima facie* case against an accused in an application for grant of bail in case of grave offence".

9. On the other hand, Mr. Chutia, learned counsel for the petitioner, has submitted that the petitioner purchased the cattle from a registered market. He further submits that no permission is required to carry cattle from the registered market for the purpose of sale or purchase, and similarly, no permission is required for carrying cattle for grazing purposes.

10. Considering the submissions of the learned counsels for both sides, the

materials available in the case diary, and the objections filed by the IO, it is evident that although the FIR was lodged on 16.10.2024, naka checking was carried out as other culprits and the vehicles had fled during the investigation. Furthermore, another incident occurred on 27.10.2024, which is part of the ongoing investigation, wherein one vehicle was intercepted on 16.10.2024. Moreover, there is sufficient incriminating material revealing that the present petitioner is one of the prime accused in this case, and he also has a criminal antecedent related to similar crimes. Therefore, I find that further custodial interrogation of the accused/petitioner may be necessary to ascertain the facts of the case, as well as to recover the stolen cattle and vehicles. The length of detention cannot be considered at this stage. Accordingly, I am of the view that this is not a fit case for granting the privilege of bail to the accused/petitioner, and the same stands rejected.

11. In terms of above, this Bail Application stands disposed of.

JUDGE

Comparing Assistant